

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**THERESA C. POOLE, in her  
capacities as the Administratrix of  
the Estate of KEVIN MILLER and as  
the Next Friend of ZION C.  
MILLER, a minor,**

**Plaintiff,**

**v.**

**TERRY LOWERY, WESTERN  
FLYER EXPRESS, LLC, R.W.  
TIMMS LEASING, LLC, GREAT  
WEST CASUALTY COMPANY and  
STOUGHTON TRAILERS, LLC,**

**Defendants.**

**CIVIL ACTION  
FILE NO. \_\_\_\_\_**

**NOTICE OF REMOVAL**

Petitioners Terry Lowery, Western Flyer Express, LLC, R.W. Timms Leasing, LLC and Stoughton Trailers, LLC hereby submit this Notice of Removal of the action herein referred to from the State Court of Fulton County, Georgia, to the United States District Court for the Northern District of Georgia, Atlanta Division, and respectfully show to the Court the following:

1.

Petitioners herein are four of the Defendants in a civil action brought in the State Court of Fulton County, Georgia, that is entitled *Theresa C. Poole, et al v. Terry Lowery, et al*, Civil Action File No. 16EV001256. Attached hereto and made a part hereof as Exhibits are true and correct copies of the following pleadings<sup>1</sup> that are on file with the State Court of Fulton County:

Exhibit “A” - Summons and Plaintiff’s Complaint;

Exhibit “B” - Collected Motions for the Appointment of Special Process Server;

Exhibit “C” - Collected Orders Appointing Various Persons as Special Process Servers;

Exhibit “D” - Affidavit of Service on Terry Lowery; and

Exhibit “E” - Affidavit of Service on Stoughton Trailers, LLC.

To the best of Petitioner’s knowledge, Exhibits “A” through “E” constitute all of the pleadings which have been filed in the State Court of Fulton County in the subject case.

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<sup>1</sup> Numerous discovery documents have been filed in the State Court action. But, as Defendant understands the Federal Rules and this Court’s Rules, discovery materials are not pleadings and are not to be filed unless and until needed as

2.

The aforementioned action was commenced by the filing of the Complaint on March 24, 2016.

3.

Petitioner Lowery was served with the Complaint and Summons on May 26, 2016. Petitioner Stoughton Trailers was served on May 31, 2016. To Petitioners' knowledge, Defendant Great West Casualty Company has not been served as of yet. Petitioners Western Flyer and R.W. Timms were served on June 6, 2016. This Petition is filed within thirty (30) days after receipt by the Petitioners, through service or otherwise, of a copy of a pleading, amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, pursuant to 28 U.S.C. §1446(b) and F.R.C.P. 6(a)(1)(c).<sup>2</sup>

4.

This Court has jurisdiction over this action pursuant to §1332 of Title 28 of the United States Code because there is complete diversity of

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evidence in the action. Therefore discovery materials are expressly excluded from this listing and will not be filed with the Court.

<sup>2</sup> This Notice is filed within 30 days of the date of Service of all Defendants that have been served to date.

citizenship between the Plaintiff and all Defendants and because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.<sup>3</sup>

5.

Upon information and belief, Petitioners show that the controversy between the Plaintiff and Defendants is a controversy between a citizen and resident of the State of Georgia (Plaintiff) and the Defendants, none of which are a citizen or resident of the State of Georgia.

6.

Upon information and belief, Plaintiff was at the time of the commencement of this action and still is a citizen and resident of the State of Georgia.

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<sup>3</sup> While the Complaint is silent as to an exact amount of damages being sought, the Plaintiff is asserting a wrongful death claim and an estate claim premised on the death of Mr. Miller. Prior to filing suit, then-counsel for the Plaintiff made a pre-suit demand for \$1,000,000. Additionally, that letter detailed how Plaintiff contends Mr. Miller died and claims that he was “decapitated” in the accident at issue in the case. That letter also asserts that Mr. Miller was 39 years old at the time of death and was, according to the letter, making in excess of \$100,000 per year in income. Based upon the experience of counsel for Petitioners and their familiarity with wrongful death actions in Georgia, counsel asserts that, based on the allegations made to them, there is a good-faith basis to believe and assert that the statutory threshold is met in this matter. Thus, while denying liability for these alleged damages, Petitioners have a good faith belief that the amount in controversy exceeds the \$75,000 threshold requirement to invoke diversity jurisdiction. See *Farley v. Variety Wholesalers, Inc.*, 2013 U.S. Dist. LEXIS 57740 (M.D. Ga. Apr. 23, 2013).

7.

Petitioner Lowery was at the time of the commencement of this action and still is a citizen and resident of the State of North Carolina.

8.

Petitioner Western Flyer was at the time of the commencement of this action and still is a limited liability company organized under the laws of the State of Oklahoma, whose principal place of business is Oklahoma and none of whose members are residents of the State of Georgia. Its members and their states of residency are:

Member: Rodney Timms

State of Residency: Oklahoma

Member: Randy Timms

State of Residency: Oklahoma

9.

Petitioner R.W. Timms was at the time of the commencement of this action and still is a limited liability company organized under the laws of the State of Oklahoma, whose principal place of business is Oklahoma and none of whose members are residents of the State of Georgia. Its members and their states of residency are:

Member: Rodney Timms

State of Residency: Oklahoma

Member: Randy Timms

State of Residency: Oklahoma

10.

Defendant Great West, who has not yet been served in this matter, was at the time of the commencement of this action and still is a corporation formed under the laws of the State of Nebraska with a principal place of business in Nebraska.

11.

Petitioner Stoughton Trailers was at the time of the commencement of this action and still is a limited liability company organized under the laws of the State of Wisconsin, with its state of incorporation and principal place of business in Wisconsin. Its member is STI Holding Company, Inc., and it is a resident of the State of Wisconsin.

12.

All of the named and served parties to this suit consent to the removal of this action to this Court. All of the named Defendants are diverse from Plaintiff and complete diversity exists. The matter in controversy exceeds the value of \$75,000.00, exclusive of interest and costs, and is a civil action

brought in a State Court of the State of Georgia, of which the United States District Courts have original jurisdiction because of diversity of citizenship and the amount in controversy pursuant to 28 U.S.C. §1332.

13.

Based on the complete diversity that exists between the parties and the amount in controversy, the pending action is one that Petitioners are entitled to remove to this Court pursuant to 28 U.S.C. §§1332, 1446(b).

WHEREFORE, Petitioners pray that this Petition for Removal be filed and that said action be removed to and proceed in this Court and that no further proceedings be had in the said case in the State Court of Fulton County, Georgia.

Respectfully submitted this 24<sup>th</sup> day of June, 2016.

**SIGNATURES ON FOLLOWING PAGE**

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IN THE UNITED STATES DISTRICT COURT  
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THERESA C. POOLE, in her  
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CERTIFICATE OF SERVICE and  
CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 5.1(C)

This is to certify that I have this day served counsel in the foregoing matter with a copy of the foregoing PETITION FOR REMOVAL with Exhibits "A" through "E" attached thereto, together with Attorney's Affidavit, Affidavit of Filing in State Court of Fulton County, and Notice of Filing by depositing in the United States Mail a copy of same in an envelope with adequate postage thereon, addressed as follows:

Quinton S. Seay  
Eugene Felton, Jr.  
Stewart Seay & Felton, LLC  
260 Peachtree Street  
Suite 1001  
Atlanta, GA 30303  
*Counsel for Plaintiff*

I further certify pursuant to Rule 7.1 of the Local Rules for the Northern District of Georgia that this document has been prepared in “Century Schoolbook” font, 13 point, as required by Local Rule 5.1(C).

Respectfully submitted this 24<sup>th</sup> day of June, 2016.

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